

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STATE OF WASHINGTON,
Plaintiff,
v.
THE GEO GROUP, INC.,
Defendant.

Case No: 3:17-cv-05806-RJB

GEO'S ANSWER

THE GEO GROUP, INC.,
Counterplaintiff,
v.
STATE OF WASHINGTON,
Counterdefendant.

Case No: 3:17-cv-05806-RJB

GEO'S COUNTERCLAIMS

1 The GEO GROUP, Inc. (“GEO”) answers the State of Washington’s Complaint (the
2 “Complaint”) as follows:

3 1.1 Paragraph 1.1 of the Complaint contains an introduction with various conclusory
4 opinions that GEO disputes. Paragraph 1.1 is denied to the extent Paragraph 1.1 alleges any
5 facts. GEO specifically denies that civil immigration detainees who participate in the Voluntary
6 Work Program at the Northwest Detention Center (“NDWC”) are employed by GEO.
7 Consequently, GEO denies that the State has any basis to claim GEO should make minimum
8 wage payments to them under Washington’s Minimum Wage Act (“MWA”). GEO could not
9 have been unjustly enriched when complying with the Department of Homeland Security-Office
10 of Immigration and Customs Enforcement (“ICE”) required a Voluntary Work Program because
11 detainees are not entitled to wages under the MWA. Voluntary Work Program participants
12 volunteer and choose self-care tasks—like meal preparation, basic housekeeping chores, and
13 grooming—that are designed to reduce idle time while in detention.
14

15 1.2 Paragraph 1.2 is denied to the extent it makes any factual allegations relevant to this case.
16 Competitive employment opportunities protected by the MWA serve no purpose in a secured
17 detention environment, and application of the MWA here conflicts with federal law and policies
18 pertaining to employment of unauthorized aliens and detention facility operations. Washington
19 excludes its own detainees from the definition of “employee” under the MWA. Federal
20 immigration detainees similarly have no right to claim competitive wages while detained at
21 government expense.
22

23 1.3 Paragraph 1.3 is admitted in that Washington sets an hourly minimum wage applicable to
24 certain employment relationships. Paragraph 1.3 is otherwise denied.
25

1 1.4 Paragraph 1.4 is admitted in that the federal government approves an allowance payment
2 of \$1.00 per day to any detainee who volunteers to participate in the Voluntary Work Program,
3 regardless of the hours of participation. ICE pays this rate to GEO as a credit to a detainee's
4 commissary account without withholdings of any kind. GEO pays this allowance regardless of
5 performance or level of participation. Paragraph 1.4 is otherwise denied.
6

7 2.1 Paragraph 2.1 is denied.

8 2.2 GEO admits that this Court has subject matter jurisdiction over this claim under 28
9 U.S.C. § 1442. To the extent it makes any factual averments, paragraph 2.2 is denied.
10

11 2.3 GEO admits that venue is proper in this court because NWDC is located in Pierce
12 County. To the extent it makes any factual averments, paragraph 2.3 is denied.

13 3.1 Paragraph 3.1 is admitted in that Bob Ferguson is the elected Attorney General for
14 Washington State. In that role, counsel Ferguson has legal duties to the State. But it is denied
15 that he has authority to bring a MWA enforcement action as pled here because Washington has
16 delegated enforcement of the MWA to the Department of Labor and Industries. Paragraph 3.1 is
17 otherwise denied.
18

19 3.2 Paragraph 3.2 is admitted.
20

21 3.3 Paragraph 3.3 is denied to the extent it alleges that GEO has damaged Washington's
22 economic health or its residents' health, safety or well-being. Paragraph 3.3 is otherwise
23 admitted.

24 3.4 Paragraph 3.4 is denied to the extent it is intended to aver that Washington's interests
25 extend to federal detainees at NWDC or that the Voluntary Work Program indirectly damages
26 other Washington residents. Paragraph 3.4 is otherwise admitted.
27

1 3.5 Paragraph 3.5 states legal conclusions; to the extent the paragraph makes factual
2 allegations, those allegations are denied. The State of Washington has no legitimate interest in
3 the Voluntary Work Program at NWDC, nor do Washington's citizens agree that federal
4 immigration detainees have greater rights than Washington's documented citizens who are
5 detained.
6

7 3.6 Paragraph 3.6 contains a table reciting wage rates linked to a website which GEO has no
8 factual basis to either admit or deny. Therefore, Paragraph 3.6 is denied in its entirety.
9

10 3.7 Paragraph 3.7 is admitted in that GEO is a for-profit corporation doing business in the
11 State of Washington. Paragraph 3.7 is otherwise denied.

12 3.8 Paragraph 3.8 is admitted in that NWDC is located on "J" Street in Tacoma, WA and that
13 NWDC is GEO's facility subject to the federal government's exclusive use for federal
14 immigration processing. Paragraph 3.8 is otherwise denied.
15

16 3.9 Paragraph 3.9 is admitted in that NWDC is an ICE immigration processing center that
17 includes secure detention services provided by GEO. NWDC is occupied by ICE, its
18 administrative courts, its health care providers, and GEO's employees, as well as those detainees
19 whom ICE holds at the facility. NWDC has a capacity of approximately 1,500 detainees.
20 Paragraph 3.9 is otherwise denied.
21

22 3.10 Paragraph 3.10 is admitted.

23 3.11 Paragraph 3.11 is denied to the extent it is intended to aver that the MWA applies to GEO
24 with respect to detainees housed at NWDC. The ICE contract obligates GEO to comply with
25 applicable laws, but the MWA is not applicable to detainees. Any remaining factual allegations
26 in paragraph 3.11 are denied.
27

1 4.1 Paragraph 4.1 is denied.

2 4.2 Paragraph 4.2 is denied to the extent it alleges that detainees work for GEO. Detainees
3 participate in the Voluntary Work Program at NWDC, which enables them to avoid idle time by
4 performing tasks related to their personal needs and receive a daily allowance.
5

6 4.3 Paragraph 4.3 is admitted in that the amount reimbursed by ICE for allowances to
7 detainees for participating in the Voluntary Work Program is at least \$1.00 per day, which a
8 participant receives from federal appropriations regardless of the time the participant chooses to
9 participate in any self-selected task. Paragraph 4.3 is otherwise denied.
10

11 4.4 Paragraph 4.4 is admitted to the extent that GEO generally pays detainees the \$1 daily
12 allowance dictated by ICE for participating in the Voluntary Work Program. Paragraph 4.4 is
13 otherwise denied.
14

15 4.5 Paragraph 4.5 is denied.

16 4.6 Paragraph 4.6 is denied.

17 4.7 Paragraph 4.7 is denied with respect to GEO's relationship to detainees who participate in
18 the Voluntary Work Program.
19

20 4.8 Paragraph 4.8 is admitted in that GEO does not pay detainees minimum wages.
21 Paragraph 4.8 is otherwise denied.

22 4.9 Paragraph 4.9 is denied.

23 5.1 Paragraph 5.1 is denied and admitted in the same manner as set forth above.

24 5.2 Paragraph 5.2 is a legal conclusion that need not be admitted or denied. To the extent
25 Paragraph 5.2 makes any factual averments about the application of the MWA to GEO,
26 paragraph 5.2 is denied.
27

1 5.3 Paragraph 5.3 is admitted to the extent that some detainees do participate in meal service,
2 cleaning, and laundry tasks. Paragraph 5.3 is otherwise denied.

3 5.4 Paragraph 5.4 is admitted in that detainees who elect to participate in the Voluntary Work
4 Program receive a \$1.00 daily allowance appropriated from federal funds. Paragraph 5.4 is
5 otherwise denied.
6

7 5.5 Paragraph 5.5 is admitted in so far as the current State minimum wage rate is \$11.00 per
8 hour. Paragraph 5.5 is otherwise denied.
9

10 5.6 Paragraph 5.6 is a legal conclusion that need not be admitted or denied. To the extent
11 Paragraph 5.2 makes any factual averments, it is denied.

12 6.1 Paragraph 6.1 is denied and admitted in the same manner as set forth above.

13 6.2 Paragraph 6.2 is generally admitted. To the extent paragraph 6.2 avers that GEO unjustly
14 profits from the Voluntary Work Program in particular, paragraph 6.2 is denied.
15

16 6.3 Paragraph 6.3 is denied.

17 6.4 Paragraph 6.4 is denied.

18 6.5 Paragraph 6.5 is denied.

19 6.6 Paragraph 6.6 is denied.
20

21 7.1 – 7.8 Paragraphs 7.1 through 7.8 contain the State's prayer for relief, which are denied to the
22 extent the paragraphs contain any factual averments.

23 AFFIRMATIVE DEFENSES

24 8.1 Plaintiff has failed to state a claim for which relief may be granted.

25 8.2 Plaintiff seeks relief barred by the statute of limitations.

26 8.3 Plaintiff's claims are pre-empted by federal law.
27

1 8.4 Plaintiff has unreasonably delayed in requesting relief, and its lack of diligence and
2 activity in stating or making a legal claim—to the prejudice of GEO—means its claim is barred
3 by the affirmative defense of laches.

4
5 8.5 Plaintiff has failed to join a plaintiff required by Federal Rule of Civil Procedure 19,
6 namely the Washington Department of Labor and Industries.

7 8.6 Plaintiff has failed to join defendants required by Federal Rule of Civil Procedure 19,
8 namely the Department of Homeland Security and ICE.

9
10 8.7 Plaintiff's claims are not ripe.

11 8.8 Plaintiff's claims are not justiciable.

12 8.9 Plaintiff has unclean hands and is acting in bad faith.

13 8.10 Plaintiff seeks unjust enrichment.

14 8.11 Plaintiff is not entitled to attorney's fees or costs.

15
16 8.12 GEO has not been unjustly enriched by any work performed by detainees, because GEO
17 has provided services to detainees, and any award against GEO for unjust enrichment must be
18 offset by costs incurred for caring for plaintiffs during their time in detention.

19
20 8.13 Plaintiff has failed to exhaust all administrative remedies.

21 GEO requests that plaintiff take nothing by way of its Complaint and that judgment be
22 entered in favor of GEO.

23 COUNTERCLAIMS

24 JURISDICTION

25
26 9.1 The court has jurisdiction over the parties and subject matter of these proceedings under 28
27 U.S.C. § 1442.

1 9.2 Jurisdiction is also grounded in both 28 U.S.C. § 1331, because the case involves issues of
 2 federal law, and 28 § U.S.C. 1332, because counterplaintiff resides at its principal place of
 3 business in Boca Raton, FL, and counterdefendant, the State of Washington, is not the real party
 4 in interest, but in fact brings suit on behalf of Washington residents. The amount in controversy
 5 on the counter claims exceeds \$75,000.00.

7 9.3 Jurisdiction is further grounded on the court's supplemental authority pursuant to 28
 8 U.S.C. § 1367. The counterclaims are part of the same case or controversy raised in plaintiffs'
 9 complaint that raise federal questions as set forth in GEO's motion to dismiss that is incorporated
 10 into these counterclaims.

12 PARTIES

13 (Counterclaimant)

14 10.1 GEO is a corporation with a principal place of business in Boca Raton, FL. GEO is
 15 responsible for operating the Northwest Detention Center ("NWDC") for the exclusive use and
 16 benefit of ICE, under terms set out in the contracts between GEO and ICE, applicable regulations
 17 and detention facility standards, and the laws of the United States.

19 10.2 GEO is the defendant named in plaintiff's complaint.

20 (Counterdefendant)

22 10.3 The State of Washington is the counterdefendant.

23 CAUSES OF ACTION

24 Unjust Enrichment - Offset

25 11.1 As required by its contract with ICE, GEO operates the Voluntary Work Program, which
 26 is intended partly to offset the cost of detention to taxpayers and partly to reduce detainees' idle
 27

1 time. The Voluntary Work Program does not, and is not intended to, create an
2 employer/employee relationship between GEO and detainees housed at NWDC.

3 11.2 Because the program is purely voluntary, detainees are not required to participate.
4

5 11.3 Further, because the program is intended to promote institutional maintenance and reduce
6 detainee idleness, it includes none of the traditional performance metrics of a standard job.
7 Consequently, GEO does not require detainees to file job applications, accept any such
8 applications from non-detainees, or require detainees to prove their work eligibility as required
9 by federal law. Similarly, GEO does not evaluate or rate detainee performance, or discipline or
10 fire detainees for slow performance. GEO has no capacity to deny a detainee participation in the
11 program at-will.
12

13 11.4 Also as required by its contract with ICE, GEO provides basic necessities to all detainees
14 housed at NWDC, which necessities include food, shelter, clothing, bedding, recreation, and
15 entertainment. Detainees do not pay GEO or the federal government for these services. GEO's
16 provision of services at the NWDC is paid for under GEO's contract with ICE, under financial
17 terms set at the start of the contractual term and modified by amendments to the contract.
18

19 11.5 Through this lawsuit, the State has intentionally interfered with the ICE-GEO contractual
20 relationship by bringing a lawsuit alleging that GEO has an employer-employee relationship with
21 federal immigration detainees in ICE's custody who participate in the Voluntary Work Program.
22 The State's claim rests on the nonsensical theory that GEO is required to pay a minimum wage
23 to detainees, notwithstanding that the ICE-GEO contract nowhere contemplates an employer-
24 employee relationship between GEO and detainees, everywhere assumes that such a relationship
25 does not exist, effectively prohibits such a relationship between GEO and most—if not all—
26

1 detainees, and nowhere requires payment of a state minimum wage by GEO to detainees.

2 11.6 While the State of Washington seeks to use the courts to compel GEO to disgorge money
3 based on the allegation that GEO was unjustly enriched by detainee participation in the
4 Voluntary Work Program, the State itself has conferred no benefit on GEO that GEO is seeking
5 to unjustly retain. Consequently, any disgorgement of money from GEO under the State's unjust
6 enrichment theory would amount to a windfall that would unjustly enrich the State of
7 Washington.
8

9 11.7 To avoid this windfall, GEO is entitled to an offset from any award of money for unjust
10 enrichment for the costs of running the Voluntary Work Program and for the costs of detention
11 that were not contemplated in the ICE-GEO contract and amendments. To the extent these costs
12 exceed the amount that may be calculated per participant for the tasks performed in the program,
13 any award on the State's unjust enrichment theory would be nullified. But GEO does not seek
14 any positive award—whether treated as damages or equitable relief—against the State.
15

16 11.8 Further, the State's theory is fundamentally duplicative of the claim in another case
17 before this court, *Chen v. The GEO Group*. If any party unjustly enriched GEO—which GEO
18 does not admit—that party consists of one or more detainees who participated in the Voluntary
19 Work Program at NWDC. Consequently, the relief sought in this matter wholly duplicates the
20 relief sought in that one, such that an award in favor of the plaintiffs in *Chen* should offset, dollar
21 for dollar, any award to the State to avoid double recoveries.
22

23
24 Declaratory Relief – 28 U.S.C. § 2201
25

26 12.1 At all times relevant to these proceedings, GEO operated a Voluntary Work Program at
27 NWDC as required by its contract with ICE. That Voluntary Work Program was, and is, subject

1 to federal detention standards.

2 12.2 The Voluntary Work Program at NWDC is critical to the safe and secure operations of
3 the facility. Specifically, the Voluntary Work Program reduces idle time for detainees and
4 promotes institutional efficiency, just as similar programs in Washington's own facilities do.
5 Voluntary Work Program participants do not compete to participate in the Program, GEO does
6 not evaluate participants' performance as it evaluates its actual employees, and detainees are not
7 precluded from participation in the Voluntary Work Program if they do not perform
8 competitively.
9

10
11 12.3 Pursuant to an express authorization from Congress that ICE may authorize allowances to
12 immigration detainees for work performed while detained, ICE authorized an allowance of \$1.00
13 per day for each Voluntary Work Program participant and reimbursed GEO at that rate under its
14 contract. Participants receive an allowance of \$1.00 per day for participation in the Voluntary
15 Work Program regardless of their level of activity.
16

17 12.4 ICE must authorize any increase in the reimbursement rate of \$1.00 per day as expressed
18 in the ICE/GEO contract for NWDC. Without an approved increase in the reimbursement rate,
19 GEO may not pay detainees without consent from ICE in excess of \$1.00 per day for
20 participation in the Voluntary Work Program at NWDC.
21

22 12.5 ICE also prohibits GEO from employing any detainees. ICE must clear any GEO
23 employee via a background check performed by ICE. ICE also requires GEO to immediately
24 suspend any employee found to have a history of arrests.
25

26 12.6 Detainees at NWDC volunteer to participate in the Voluntary Work Program. Detainees
27 may not be coerced to participate in the program.

1 12.7 Washington's agencies and officials have known about the federal Voluntary Work
2 Program at NWDC for many years, but have not notified GEO or ICE that the program
3 establishes an employment relationship or requires paying a minimum wage. Washington has
4 known that Voluntary Work Program participants at NWDC are not considered GEO employees
5 either by GEO or by ICE.
6

7 12.8 Washington has not previously considered ICE detainees at NWDC to be protected by
8 the MWA, nor has it previously sought to enforce the MWA against GEO or ICE for detainees at
9 NWDC. Washington has not conferred with the federal government about increasing the
10 appropriation or allowance to minimum wage rates.
11

12 12.9 No detainee has ever filed a MWA complaint with the Department of Labor & Industries.

13 12.10 No detainee has ever sought relief from an immigration judge or ICE to work for GEO.

14 12.11 Washington excludes its own detainees from the MWA, because that law applies to
15 competitive workplaces in which workers are expected to earn a living wage, not to detention
16 where government is covering living expenses.
17

18 12.12 State officials, such as Attorney General Ferguson, have publicly disparaged GEO with
19 pronouncements that harm GEO's business reputation. Such allegations include assertions that
20 amount to criminal wrongdoing, abuse of corporate powers, and exploitation of undocumented
21 immigrants.
22

23 12.13 This matter presents an actual controversy between GEO and the State over the
24 application of the MWA: the State has initiated a lawsuit claiming GEO employs detainees at
25 the NWDC when it does not. The Court should declare that under the MWA there is no
26 employment relationship between GEO and detainees, and further detainees are not GEO's
27

1 “employees” and GEO is not their “employer” with respect to participation in the Voluntary
2 Work Program.

3 12.14 The Federal Labor Standards Act (“FLSA”) is persuasive authority in interpreting the
4 MWA. Therefore, there is an actual controversy between GEO and the State as to whether
5 detainees at the NWDC would be entitled to a minimum wage under the FLSA.
6

7 12.15 Ample judicial authority holds that detainees, in many ways like prisoners, are not
8 participants in commerce and therefore not within the scope of the FLSA’s minimum wage
9 protections. Under these FLSA authorities, detainees are not employed and are not “employees”
10 of detention facilities when they participate in Voluntary Work Programs and the facilities are
11 not their “employers.”
12

13 12.16 The Court should declare that under the FLSA, detainees are not entitled to minimum
14 wages, and further that detainees are not GEO’s “employees” and GEO is not their “employer”
15 with respect to participation in the Voluntary Work Program.
16

17 GEO prays for the following affirmative relief:

- 18 1. For an order enjoining the State or Attorney General Ferguson from claiming the
19 MWA applies to GEO’s operation of the Voluntary Work Program at the NWDC;
20
- 21 2. For an order declaring the MWA inapplicable to ICE detainees at the NWDC;
- 22 3. For an order declaring the FLSA inapplicable to ICE detainees at the NWDC;
- 23 4. For a declaration that GEO has no employment relationship with any detainees who
24 participate in the Voluntary Work Program, including no relationship that requires
25 payment of a minimum wage;
26
- 27 5. For an offset against any award in favor of the State for services GEO provided to
28

1 detainees;

2 6. For an award of attorney's fees and costs;

3 7. For other and further relief as the court deems just and equitable.

4
5 Dated: December 20, 2017

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6
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19
20 **ATTORNEYS FOR DEFENDANT AND**
21 **COUNTERCLAIMANT THE GEO**
22 **GROUP, INC.**

CERTIFICATE OF SERVICE

I, Joseph Fonseca, hereby certify as follows:

I am over the age of 18, a resident of Pierce County, and not a party to the above action.
On December 20, 2017, I electronically filed the above GEO's Answer and Counterclaims, with the Clerk of the Court using the CM/ECF system and served via Email to the following:


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I certify under penalty of perjury under the laws of the State of Washington that the above information is true and correct.

DATED this 20th day of December, 2017 at Fircrest, Washington



Joseph A. Fonseca, Paralegal